

1 **ROUTH CRABTREE OLSEN, P.S.**

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Honorable Judge Karen A. Overstreet

Hearing Location: Marysville

Hearing Date: September 22, 2010

Hearing Time: 10:30 am

Response Date: September 15, 2010

4 **IN THE UNITED STATES BANKRUPTCY COURT**  
5 **WESTERN DISTRICT OF WASHINGTON**

6 **IN RE:**

7 **JOEY P SUMABAT AND**

8 **LISA E SUMABAT**

9 **DEBTORS.**

**CHAPTER 7 BANKRUPTCY**

**NO.: 10-12385-KAO**

**MOTION FOR RELIEF FROM STAY  
BY NATIONSTAR MORTGAGE LLC**

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11 **I. Introduction**

12 COMES NOW, Nationstar Mortgage LLC its successors in interest, agents, assigns and  
13 assignors ("Creditor") and moves this court for an order terminating the automatic stay, allowing  
14 Creditor to proceed with and complete any and all contractual and statutory remedies incident to  
15 its security interests held in real property commonly described as 1128 211th Place SW,  
16 Lynnwood, Washington 98036 ("Property"), and legally described as set forth in the Deed of  
17 Trust attached as an Exhibit to the affidavit on file with the court. Creditor further seeks relief in  
18 order to, at its option, offer, provide and enter into any potential forbearance agreement, loan  
19 modification, refinance agreement or other loan workout/loss mitigation agreement and to  
20 contact the Debtor via telephone or written correspondence to offer such an agreement, which  
21 shall be non-recourse unless included in a reaffirmation agreement. Creditor further moves that,  
22 absent objection, the provisions of F.R.B.P. 4001(a)(3) be waived to avoid further deterioration  
23 of Creditor's secured position.  
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2 **II. Jurisdiction**

3 This court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 1334 and 28  
4 U.S.C. § 157(b)(2)(G). This case relates to a case under Title 11 of the United States Code. This  
5 proceeding is defined as a “core proceeding” as that is defined in the Code.  
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7 **III. Standing**

8 Under 11 U.S.C. § 362, a party seeking relief from stay must be a “party in interest.” To  
9 establish that Creditor is a “party in interest”, a creditor must establish that it has at least a  
10 colorable claim to the property that is the subject of the motion. In the case at bar, Creditor’s  
11 claim is based on the Note and Deed attached to the Affidavit and on file with the court.  
12 Creditor’s interest in the Note and Deed is described below.

13 The Deed acts as the security for the Borrower’s payment on the Note. The Deed is  
14 recorded with the county in which the property is situated as evidence of the debt described in  
15 the Note for the benefit of any subsequent parties that may take an interest in the property  
16 described.

17 The Note is a negotiable instrument as that term is defined by RCW § 62A.3-104. Under  
18 the terms of the Note, Borrower is obligated to pay the instrument according to its terms at the  
19 time it was issued. Creditor is entitled to enforce the note under R.C.W. § 62A.3-301.

20 Under RCW § 62A.3-301(i), the holder of a negotiable instrument is entitled to enforce  
21 that instrument. The term “holder” includes the person in possession of a negotiable instrument  
22 that is payable to a bearer that is in possession. RCW § 62A.1-201. A note not indorsed to a  
23 particular payee is a note “Indorsed in Blank.” A note Indorsed in Blank is payable to the bearer  
24 and may be transferred by possession alone. RCW § 62A.3-205. The transfer of a note secured  
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by a deed of trust carries with it the security agreement as incident. See *Spencer v. Alki Point Transportation Company*, 53 Wash. 77, 101 P. 509 (Wash. 1909).

In the case at bar, the Note, together with the Affidavit accompanying this motion, establish that Creditor is the holder of note indorsed in blank and is thus entitled to enforce the Note and foreclose on the deed of trust. Therefore, Creditor has standing to bring this motion.

#### IV. Parties in Interest

On or about June 29, 2007, Joey P. Sumabat and Lisa E. Sumabat ('Borrower' collectively hereafter), executed and delivered a note in favor of Homecomings Financial, LLC f/k/a Homecoming Financial Network, Inc. with an original principal amount of \$358,000.00.

The indebtedness under the note is secured by a deed of trust recorded against the Property.

Joey P Sumabat and Lisa E Sumabat ('Debtor' collectively hereafter) filed for protection under Chapter 7 of Title 11 of the United States Code on March 4, 2010.

Foreclosure is pending but on information and belief the sale date has not yet been set.

#### V. Default

Debtor is in default pursuant to the terms of the note for failure to make the required payments. Payments are credited as last received to first due. Creditor's loan status reflects payments now owing due after January 1, 2010. The following is a breakdown of the default:

| Date of Contractual Payments    | Amount     | Total              |
|---------------------------------|------------|--------------------|
| January 1, 2010 to June 1, 2010 | \$2,404.94 | \$14,429.64        |
| July 1, 2010 to August 1, 2010  | \$2,399.23 | \$4,798.46         |
| Appraisal Fees                  |            | \$90.00            |
| <b>Total Default</b>            |            | <b>\$19,318.10</b> |

These figures are an estimate only and are subject to change as additional fees are incurred and payments are made or become due, including but not limited to the attorney fees

1 and costs incurred as a result of the filing of this motion. Please contact Creditor's counsel  
2 directly for a reinstatement quote.

#### 3 4 **VI. Estimate of Obligation**

5 The approximate amount owed under the terms of the note is \$373,772.76. The  
6 following is an itemization of this approximate amount:

|                     |                     |
|---------------------|---------------------|
| 7 Principal Balance | \$357,896.86        |
| 8 Accrued Interest  | \$15,785.90         |
| 9 Appraisal Fees    | \$90.00             |
| <hr/>               |                     |
| 10 <b>Total Due</b> | <b>\$373,772.76</b> |

11 This total is an approximation of the lien. This estimate is provided only for the purposes  
12 of this motion and cannot be relied upon for any other purpose, including tender of payoff. An  
13 exact, itemized payoff figure will be obtained from Creditor upon written request to counsel for  
14 the Creditor.

15 Other liens encumbering the Property include a scheduled debt in favor of GMAC with  
16 an approximate balance owed of \$44,966.33.

#### 17 18 **VII. Value of the Property**

19 Debtor's sworn schedules value the Property at \$325,000.00.

#### 20 21 **VIII. Authority**

22 Under 11 U.S.C. § 362 (d)(1), on request of a party in interest, the Court shall terminate,  
23 annul, modify or condition the stay for cause, including the lack of adequate protection.  
24 Adequate protection is lacking in cases where there is an insufficient equity cushion in the  
25 subject property. In re Mellor, 734 F.2d 1396, 1401 (9<sup>th</sup> Cir. 1984). An equity cushion is the  
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1 amount of value in property that exceeds the amount owed on the property such that a secured  
2 creditor will not be subject to a loss in the event of a decrease in value while the property is  
3 encumbered by the automatic stay. Id. at 1400 n.2. In determining the amount of value in  
4 property, the likely costs of sale or liquidation must be considered. In re Faires, 34 Bankr. 549,  
5 550 (Bankr. W.D. Wash. 1983). In the case at bar, considering the value of the Property,  
6 Creditor's total lien, and the likely costs of liquidation, there is an insufficient equity cushion and  
7 thus Creditor lacks adequate protection.

8 Under 11 U.S.C § 362(d)(2), a Court shall terminate, annul, modify or condition the stay  
9 if the debtor has no equity in the Property and the Property is not necessary for an effective  
10 reorganization. In the case at bar, the value of encumbrances, including all liens and costs of  
11 liquidation, together with available exemptions, exceed the value of the property such that there  
12 is no equity available for the estate. Because the Debtor has chosen to liquidate under Chapter 7  
13 of the Bankruptcy Code, the granting of an Order on Relief from Stay will not adversely affect  
14 the prospects of reorganization.

15 Under 11 U.S.C. § 362(d)(1), cause to terminate the automatic stay exists in Debtor's  
16 continued failure to make payments towards the obligation. In this case Debtor has failed to  
17 make the required payments as due under the terms of the note and thus there is cause to lift the  
18 stay.

#### 20 IV. Conclusion

21 THEREFORE, Creditor requests this Court enter an order terminating the automatic stay

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3 pursuant to 11 U.S.C. § 362 and that Creditor be allowed to immediately proceed with and  
4 complete any and all contractual and statutory remedies incident to the security interests held in  
5 the Property.

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7 DATED this 13th day of Aug, 2010.

8 **ROUTH CRABTREE OLSEN, P.S.**

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10 By: /s/ Mark MoBurg WSBA #19463 for:  
11 James K. Miersma, WSBA# 22062  
12 Attorneys for Creditor  
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